

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|---------------------------|---|-------------------|
| UNITED STATES OF AMERICA, |) | 4:05CR3126 |
| |) | |
| Plaintiff, |) | MEMORANDUM |
| vs. |) | AND ORDER |
| |) | |
| ERICK RAY TRIMBLE, |) | |
| |) | |
| Defendant. |) | |

This matter is before the court on a report and recommendation by Magistrate Judge Piester (filing 21), recommending denial of Defendant's motion to dismiss (filing 16). Pursuant to NECrimR 57.3 and 28 U.S.C. § 636(b)(1), Defendant has filed a statement of objection (filing 23).

I have conducted a de novo review. I find that inasmuch as the Magistrate Judge has fully, carefully, and correctly found the facts and applied the law, Defendant's objections should be denied, the report and recommendation should be adopted, and Defendant's motion should be denied.

I specifically reject Defendant's argument that the indictment against him, charging possession of a firearm by a person who has been convicted of a misdemeanor crime of domestic violence, must be dismissed unless the state court record of his prior conviction establishes that a "domestic relationship" existed between Defendant and his victim. This element of the charge may be established by other evidence at trial. See United States v. Cuervo, 354 F.3d 969, 998 (8th Cir.) (whether victim was "similarly situated to a spouse" was fact question for jury), vacated on other grounds, 543 U.S. 865 (2004), on remand, 427 F.3d 537 (8th Cir. 2005); United States v. Smith, 171 F.3d 617, 620 (8th Cir. 1999) (existence of "domestic relationship" is not an essential element of predicate offense).

Accordingly,

IT IS ORDERED that:

- 1) the Magistrate Judge's report and recommendation (filing 21) is adopted;
- 2) Defendant's objections (filing 23) are denied; and
- 3) Defendant's motion to dismiss (filing 16) is denied.

January 23, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge